

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DESHAWN DRUMGO,

Plaintiff,

v.

SGT. WILLIAM KUSCHEL,

Defendant.

C.A. No. 14-1135-CFC

JURY TRIAL DEMANDED

JOINT STATUS REPORT

Plaintiff DeShawn Drumgo (“Plaintiff”) and Defendant Sgt. William Kuschel (“Defendant”) hereby submit this Joint Status Report pursuant to the Court’s March 11, 2021 Order (D.I. 166).

This is a civil rights action brought by Plaintiff pursuant to 42 U.S.C. § 1983 against Defendant, a corrections officer at James T. Vaughn Correctional Center (“JTVCC”), alleging that on May 29, 2014 Defendant sexually assaulted Plaintiff during a search and frisk in the chow hall.

Plaintiff filed this action *pro se* on September 5, 2014, and it was later dismissed on summary judgment. *See* D.I. Nos. 59, 60. Plaintiff appealed, and Third Circuit vacated in part and remanded the case to the District Court as to the Eighth Amendment claim as to Defendant Kuschel. *See Drumgo v. Kuschel, 684 F. App’x 228, 231 (3d Cir. 2017).* On remand, summary judgment was granted in Defendant

Kuschel's favor after finding that Kuschel was entitled to qualified immunity because insufficient evidence was submitted to support a finding that Plaintiff's Eighth Amendment rights were violated, and that to the extent Defendant was sued in his official capacity, he was immune from suit under the Eleventh Amendment. D.I. Nos. 145, 146. Plaintiff appealed again. The case is now before the District Court after the Third Circuit's decision vacating the District Court's grant of summary judgment in favor of Defendant and remand for further proceedings. Following the Third Circuit's remand, Plaintiff was appointed counsel in this case. D.I. No. 159.

I. Discovery Needed to Prepare the Case for Trial & Case Schedule

Counsel for the parties have conferred and have agreed that certain limited discovery needs to be taken before this case is ready for trial. In particular, Plaintiff intends to take the deposition of Defendant Kuschel, who has yet to be deposed in this case, and also intends to depose the three inmate witnesses who submitted affidavits in support of Plaintiff's claims in this case. The parties intend to work out appropriate dates for these depositions, and any other discovery that the parties deem necessary and submit a stipulated discovery schedule to the Court.

II. Plaintiff's Forthcoming Motion for a Trial by Jury

Plaintiff, after consulting with counsel, seeks a jury trial in this action. After counsel for the parties conferred, Defendant was unwilling to stipulate to a jury trial.

Accordingly, Plaintiff will be filing a motion for a trial by jury on or before April 16, 2021. Defendant agrees to respond to the motion within 14 days.

III. Trial Date

The parties believe that the outcome of Plaintiff's Motion for a Trial by Jury may determine and/or impact a proposed trial date that is yet to be set for this case. The parties propose that they submit a status letter to the Court regarding a proposed trial date within fourteen (14) days after Plaintiff's motion is resolved. In the meantime, the parties will use their best efforts to get this case ready for trial by completing all necessary discovery.

Dated: April 8, 2021

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Anna Elizabeth Currier

Kenneth Lee-Kay Wan
Anna Elizabeth Currier
Carvel State Building
820 North French Street
Wilmington, DE 19801
(302) 577-8400
Kenneth.Wan@delaware.gov
anna.currier@delaware.gov

*Attorneys for Defendant
William Kuschel*

MCCARTER & ENGLISH, LLP

/s/ Alexandra M. Joyce

Daniel M. Silver (#4758)
Alexandra M. Joyce (#6423)
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, Delaware 19801
(302) 984-6300
dsilver@mccarter.com
ajoyce@mccarter.com

*Attorneys for Plaintiff
DeShawn Drumgo*